

SERVED: June 22, 1992

NTSB Order No. EA-3586

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the **28th** day **of May, 1992**

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

Docket

SE-9763

LOUIS CHAVOSSY,

Respondent.

OPINION AND ORDER

Respondent has appealed from an initial decision that Administrative Law Judge Jerrell R. Davis issued on August 3, 1989, at the conclusion of an evidentiary hearing.¹ The law judge affirmed an order the Administrator issued October 25, 1988, suspending respondent's commercial pilot certificate for 60 days alleging violations of sections 91.90(a)(1)(i) and 91.9 of

¹ A copy of the oral initial decision, an excerpt from the transcript, is attached.

the Federal Aviation Regulations (FAR).² The Administrator charged respondent with operating an aircraft (a Beech Sierra) into the San Francisco terminal control area (TCA) without having obtained an appropriate authorization prior to doing so.

On the basis of its review of the entire record, the Board finds that safety in air commerce or air transportation and the public interest require that the Administrator's order be affirmed.

The Administrator characterizes respondent's notice of appeal, which respondent asked that we treat as his appeal brief, as a request for rehearing based on his desire to present the testimony of the passengers on the flight out of which the charges arose. However, respondent also continues to assert that he is innocent of the charges brought, and that the law judge relied solely on what respondent characterizes as, "word of mouth

² On November 23, 1987, the date of the flight from which these allegations arose, FAR sections 91.90(a)(1)(i) and 91.9 read:

"§91.90 Terminal Control Areas.

(a) Group I terminal control areas-

(1) Operating rules. No person may operate an aircraft within a Group I terminal control area . . . except in compliance with the following rules:

(i) No person may operate an aircraft within a Group I terminal control area unless he has received an appropriate authorization from ATC prior to the operation of that aircraft in that area.

§91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

of other witnesses for the prosecution."

The Board denies the petition for rehearing. In the first place, at hearing, respondent testified,

"I don't have any witnesses because my passengers were--they are in Europe, first of all; secondly, they had no idea what was going on around here. First, they didn't even speak the English language, so how should they know what was going on? So I can't use any witnesses to defend myself." (Tr. 114-115).

Secondly, respondent provided no names of Witnesses, nor did he state what he believes the substance of their testimony might be.³ Respondent's failure to identify any matter material to the charges concerning which his passengers could provide information precludes a finding that any basis for ordering a rehearing has been demonstrated.⁴

The Board determines that the evidence presented at hearing was sufficient to establish the charges. The testimony of the controllers who followed the aircraft's flight path (and altitude) on radar, at various times from Hunters Point to descent for landing at Hayward, convinced the law judge that respondent did indeed operate within the TCA.

The law judge found especially convincing the testimony of

³ Respondent testified that he took his passengers for a plane ride around San Francisco because the visibility was good. He has not identified any matter whatsoever on which an individual not familiar with the airspace designations around the San Francisco area would provide material facts.

⁴ Respondent's passengers, Hungarian nationals, had returned to Hungary after the flight. It appears that respondent had not anticipated calling them at his original hearing and had not requested their presence.

air traffic controller Loretta Martin, who is also holder of an airline transport pilot certificate, and who testified that she saw the plane on radar above the TCA at 8,500 feet and descending.⁵ She identified respondent's route of flight starting at Hunters Point, which she located on a San Francisco sectional chart (Exh. C-1). (See, also, her contemporaneous statement, Exh. C-2) . She stated that she contacted a PSA flight climbing out of 5,800 feet, advised of the descending aircraft, and the pilot of the PSA flight advised that the aircraft was in sight. Ms. Martin conceded that, at that point, respondent was above the TCA. Shortly thereafter, she saw the plane descend through the 8,000 foot TCA ceiling to 4,000 feet before departing the TCA. Ms. Martin testified that the plane circled and began to travel southeasterly. Shortly thereafter, upon request (Exh. c-4) , the aircraft was identified by the controller at the Hayward tower (Exh. C-5) who saw the plane on radar and issued landing instructions, and, upon landing, instructed respondent to telephone the Bay TRACON supervisor (Exh. C-6) . He did so.

Respondent provided only his own testimony to the effect that, although he was sightseeing in the area with passengers, he was not aware he had entered the TCA. The law judge evaluated

⁵ The unidentified target on the radar, squawking 1200, the visual flight rules (VFR) code, had an altitude encoding transponder that was providing an altitude reading to radar controllers. (Tr. 18). Ms. Martin testified that she continuously monitored the radar target (squawking 1200) and observed its altitude readout, meanwhile verifying altitude by contacting the PSA and other flights in the vicinity that were in contact with her (Oakland TRACON, departure Radar 1 position). Respondent was in radio contact with the Hayward tower prior to landing.

the testimony and found the controller's the more credible. We perceive no reason to question his credibility determination. Credibility determinations are within the exclusive province of the trier of fact and are not to be questioned unless they are arbitrary, capricious, or contrary to the overwhelming weight of the reliable evidence of record.

In sum, the Board determines that the law judge's findings are well supported by the evidence of record.

ACCORDINGLY , IT IS ORDERED THAT:

1. Respondent's request for a rehearing is denied;
2. Respondent's appeal is denied;
3. The Administrator's order and the initial decision are both affirmed; and
4. The 60-day suspension of respondent's commercial pilot certificate shall begin 30 days after service of this order.⁶

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT , Members of the Board, concurred in the above opinion and order.

⁶ For the purposes of this order, respondent must surrender his certificate to a qualified representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).